

Title 35-A: PUBLIC UTILITIES
Chapter 1: ORGANIZATION, GENERAL POWERS AND DUTIES

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Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES
Chapter 1: ORGANIZATION, GENERAL POWERS AND DUTIES

§101. STATEMENT OF PURPOSE

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State and for other entities subject to this Title that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system as it applies to public utilities subject to service regulation under this Title is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers and to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities. [2013, c. 369, Pt. F, §1 (AMD).]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A2 (AMD). 1999, c. 398, §§A104,105 (AFF). 2011, c. 623, Pt. D, §2 (AMD). 2013, c. 369, Pt. F, §1 (AMD).

§102. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 141, Pt. A, §6 (NEW).]

1. Commission. "Commission" means the Public Utilities Commission.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Commissioner. "Commissioner" means one of the members of the Public Utilities Commission.

[1987, c. 141, Pt. A, §6 (NEW) .]

2-A. Competitive service provider. "Competitive service provider" means a competitive electricity provider as defined in section 3201, subsection 5.

[1999, c. 398, Pt. A, §3 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

3. Corporation. "Corporation" includes municipal and quasi-municipal corporations.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Customer. "Customer" includes any person, government or governmental division which has applied for, been accepted and is currently receiving service from a public utility.

[1987, c. 628, §1 (RPR) .]

4-A. Dark fiber provider. "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission; [2009, c. 612, §1 (NEW) .]

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and [2009, c. 612, §1 (NEW) .]

C. Does not transmit communications for compensation inside this State. [2009, c. 612, §1 (NEW) .]

[2009, c. 612, §1 (NEW) .]

4-B. Federally supported dark fiber. "Federally supported dark fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications, the construction of which is financed in whole or in part with funds provided by a grant awarded before January 1, 2010 by the United States Department of Commerce, National Telecommunications and Information Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).

[2009, c. 612, §2 (NEW) .]

5. Electric utility.

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §4 (RP) .]

6. Electric plant.

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §5 (RP) .]

6-A. Excluded electric plant.

[1999, c. 398, Pt. A, §§104, 105 (AFF); 1999, c. 398, Pt. A, §6 (RP) .]

6-B. Federal interconnection rights and obligations. "Federal interconnection rights and obligations" means the rights and obligations of a telecommunications entity under 47 United States Code, Sections 251 and 252 or any other provision of federal law or regulation governing telecommunications network facility interconnection or wholesale access rights and obligations to the extent the rights and obligations under the federal law or regulation may be regulated or overseen by the commission.

[2011, c. 623, Pt. A, §1 (NEW) .]

7. Ferry. "Ferry" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any vessel and which is subject to commission's jurisdiction under chapter 51.

[1987, c. 141, Pt. A, §6 (NEW) .]

7-A. Gas marketer. "Gas marketer" means an entity that sells natural gas to retail consumers in the State.

[1999, c. 143, §1 (NEW) .]

8. Gas utility. "Gas utility" includes every person, that person's lessees, trustees, receivers or trustees appointed by any court owning, controlling, operating or managing any gas plant for compensation within this State, except when gas is made or produced on and distributed by the maker or producer through private property alone solely for its own tenants and not for sale to others, or when the gas is sold solely for use in vehicles fueled by natural gas or to a liquid gas system that serves fewer than 10 customers as long as no portion of the liquid gas system is located in a public place or that serves a single customer if the liquid gas system is located entirely on the customer's premises. "Gas utility" does not include a gas marketer whose business in the State is restricted to selling natural gas to retail consumers and who does not provide natural gas transmission or distribution service.

[1999, c. 718, §14 (AMD) .]

9. Gas plant. "Gas plant" includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

[1987, c. 141, Pt. A, §6 (NEW) .]

9-A. Mobile telecommunications services. "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

[1991, c. 342, §1 (NEW) .]

9-B. Incumbent local exchange carrier. "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and:

A. On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or [2011, c. 623, Pt. A, §2 (NEW) .]

B. Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph A. [2011, c. 623, Pt. A, §2 (NEW) .]

[2011, c. 623, Pt. A, §2 (NEW) .]

9-C. Interconnected voice over Internet protocol service. "Interconnected voice over Internet protocol service" means a service that enables real-time, 2-way voice communications; requires a broadband connection from the user's location; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

[2011, c. 623, Pt. A, §2 (NEW) .]

9-D. Interexchange carrier. "Interexchange carrier" means any person, association, corporation or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier that provides interexchange service.

[2011, c. 623, Pt. A, §2 (NEW) .]

9-E. Local exchange carrier. "Local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of a commercial mobile service under 47 United States Code, Section 332(c), unless the commission by rule determines that the Federal Communications Commission includes such service in the definition of the term. "Local exchange carrier" does not include a

person insofar as that person is engaged in the provision of interconnected voice over Internet protocol service unless the person is providing provider of last resort service. "Local exchange carrier" does not include a person insofar as the person is a dark fiber provider.

[2011, c. 623, Pt. A, §2 (NEW) .]

10. Natural gas pipeline utility. "Natural gas pipeline utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the State.

[1987, c. 141, Pt. A, §6 (NEW) .]

11. Person. "Person" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, any other legal entity or natural person.

[1997, c. 707, §1 (AMD) .]

11-A. Provider of last resort service. "Provider of last resort service" has the same meaning as in section 7201.

[2011, c. 623, Pt. A, §3 (NEW) .]

12. Public heating utility.

[1999, c. 579, §2 (RP) .]

12-A. Public switched telephone network. "Public switched telephone network" means the network of equipment, lines and controls assembled to establish communication paths between calling and called parties in North America.

[2011, c. 623, Pt. A, §4 (NEW) .]

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area. "Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature; [1991, c. 342, §2 (RPR) .]

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services; [1991, c. 342, §2 (RPR) .]

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and [1991, c. 342, §2 (RPR) .]

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services. [1991, c. 342, §2 (RPR) .]

[2009, c. 539, §1 (AMD) .]

14. Radio common carrier. "Radio common carrier" means an entity that provides communications services primarily by use of radio or other wireless means.

[1991, c. 342, §3 (AMD) .]

15. Radio paging service. "Radio paging service" is a service provided by a communication common carrier engaged in rendering signaling communication. Signaling communication is one-way communication from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of activating a signaling device in the receiver or communicating information to the receiver, whether or not the information is to be retained in record form. It is limited to the following types of communications.

A. An optical readout paging service is one which communicates a message to a receiver which displays the message on an optical or tactile readout, either in a permanent form or a temporary form. [1987, c. 141, Pt. A, §6 (NEW) .]

B. A tone only paging service is one which activates an aural, visual or tactile signaling device when received. [1987, c. 141, Pt. A, §6 (NEW) .]

C. A tone-voice paging service is one which transmits tone to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuit. [1987, c. 141, Pt. A, §6 (NEW) .]

[1987, c. 141, Pt. A, §6 (NEW) .]

16. Rate design stability. "Rate design stability" means the implementation of interclass cost allocation or intraclass rate design changes to any existing customer class, of the magnitude or on such a schedule as to not be seriously adverse to the existing class of customers.

[1987, c. 141, Pt. A, §6 (NEW) .]

16-A. Self generation. "Self generation" means the generation of electricity for the use of an entity that owns, leases, operates, controls or manages, in whole or in part, generation assets, as defined in section 3201, subsection 10, provided that the electricity is not transmitted over transmission and distribution plant, as defined in subsection 20-A.

[1999, c. 398, Pt. A, §8 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

17. Telegraph utility.

[1995, c. 225, §3 (RP) .]

18. Telegraph line.

[1995, c. 225, §3 (RP) .]

18-A. Telephone service. "Telephone service" is the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of transmission wires.

[2003, c. 153, §2 (NEW) .]

18-B. Telephone exchange service. "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by an exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

[2011, c. 623, Pt. A, §5 (NEW) .]

19. Telephone utility. "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides telephone service for compensation inside this State. "Telephone utility" also includes a dark fiber provider. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

[2009, c. 612, §3 (AMD) .]

20. Telephone line.

[2003, c. 153, §3 (RP) .]

20-A. Transmission and distribution plant. "Transmission and distribution plant" means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for public use and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for public use.

[1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

20-B. Transmission and distribution utility. "Transmission and distribution utility" means a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State, except where the electricity is distributed by the entity that generates the electricity through private property alone solely for that entity's own use or the use of the entity's tenants and not for sale to others.

[1999, c. 398, Pt. A, §9 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

21. Vessel. "Vessel" includes every boat which is owned, controlled, operated or managed for public use in the transportation of persons or property for compensation within this State.

[1987, c. 141, Pt. A, §6 (NEW) .]

21-A. Voice service provider. "Voice service provider" means any person providing, directly or indirectly, 2-way voice communications service for compensation in this State. "Voice service provider" does not include a dark fiber provider.

[2011, c. 623, Pt. A, §6 (NEW) .]

22. Water utility. "Water utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing any water works for compensation within this State, including any aqueduct organized under former Title 35, chapter 261 and any of its predecessors.

[1987, c. 490, Pt. C, §2 (AMD) .]

23. Water works. "Water works" includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures and appliances, and all real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for municipal and domestic use.

[1987, c. 141, Pt. A, §6 (NEW) .]

24. Wholesale competitive local exchange carrier. "Wholesale competitive local exchange carrier" means a local exchange carrier, other than an incumbent local exchange carrier, that provides a wholesale telecommunications service but does not provide telephone exchange service to a retail subscriber.

Subsection 24 as enacted by PL 2011, c. 590, §1 is REALLOCATED TO TITLE 35-A, SECTION 102, SUBSECTION 25)

[2011, c. 623, Pt. A, §7 (NEW) .]

25. (REALLOCATED FROM T. 35-A, §102, sub-§24) Zero-based budgeting. "Zero-based budgeting" means a method of budgeting in which programs and activities are justified for a budgetary period using cost-benefit analysis without regard to the amount that was budgeted for those programs and activities in a prior budgetary period.

[2011, c. 2, §37 (RAL) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §C2 (AMD). 1987, c. 613, §1 (AMD). 1987, c. 628, §1 (AMD). 1991, c. 342, §§1-3 (AMD). 1993, c. 178, §1 (AMD). 1995, c. 225, §§2,3 (AMD). 1997, c. 707, §1 (AMD). 1997, c. 710, §§1-3 (AMD). 1997, c. 710, §10 (AFF). 1999, c. 143, §§1,2 (AMD). 1999, c. 398, §§A3-9 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 579, §§2,3 (AMD). 1999, c. 718, §14 (AMD). 2003, c. 153, §§1-3 (AMD). 2009, c. 539, §1 (AMD). 2009, c. 612, §§1-3 (AMD). RR 2011, c. 2, §37 (COR). 2011, c. 590, §1 (AMD). 2011, c. 623, Pt. A, §§1-7 (AMD).

§103. ESTABLISHMENT OF COMMISSION; POWERS AND DUTIES; SEAL AND OFFICE

1. Establishment. There is established the Public Utilities Commission which shall consist of 3 members.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Powers and duties. The commission has the following powers and duties.

A. All public utilities and certain other entities as specified in this Title are subject to the jurisdiction, control and regulation of the commission and to applicable provisions of this Title. [2011, c. 623, Pt. D, §3 (AMD).]

B. The commission shall set the basic policies of the Public Utilities Commission and shall regulate public utilities in accordance with this Title. [1987, c. 141, Pt. A, §6 (NEW).]

C. The commission shall oversee the activities of competitive service providers to the extent provided in this Title. [1999, c. 398, Pt. A, §10 (NEW); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. The commission shall oversee and manage the Emergency Services Communication Bureau established under Title 25, chapter 352. [2003, c. 359, §5 (NEW).]

[2011, c. 623, Pt. D, §3 (AMD) .]

3. Seal and office. The commission shall have a seal and be provided with office space.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A10 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 359, §5 (AMD). 2011, c. 623, Pt. D, §3 (AMD).

§104. IMPLIED POWERS

The provisions of this Title shall be interpreted and construed liberally to accomplish the purpose of this Title. The commission has all implied and inherent powers under this Title, which are necessary and proper to execute faithfully its express powers and functions specified in this Title. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§105. APPOINTMENT AND TERM

1. Appointment. The Governor shall appoint 3 members to the Public Utilities Commission. The appointments shall be subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities and to confirmation by the Legislature. Members of the commission shall devote full time to their duties.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Term. The commissioners shall serve for terms of 6 years.

A. Each term shall end on March 31st of the 6th year of the term. The terms shall be staggered so that one ends in 1987 and every 6 years thereafter, one ends in 1989 and every 6 years thereafter, and one ends in 1991 and every 6 years thereafter. [1987, c. 141, Pt. A, §6 (NEW).]

B. A commissioner may continue to serve beyond the end of this term until a successor is appointed and qualified. [1987, c. 141, Pt. A, §6 (NEW).]

C. Any vacancy occurring in the commission shall be filled by appointment for the unexpired portion of the term. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§106. CHAIRMAN OF THE PUBLIC UTILITIES COMMISSION

The following provisions apply to the chairman of the Public Utilities Commission. [1987, c. 141, Pt. A, §6 (NEW).]

1. Appointment. The Governor shall designate one member of the commission as chairman.

[1987, c. 141, Pt. A, §6 (NEW) .]

2. General duties. The chairman shall:

A. Be the principal executive officer of the commission in carrying out its policies; [1987, c. 141, Pt. A, §6 (NEW).]

B. Preside at meetings of the commission; and [1987, c. 141, Pt. A, §6 (NEW).]

C. Be responsible for the expedient organization of the commission's work. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Hearings. For any particular hearing or series of hearings before the commission, the chairman may assign himself or another commissioner to attend.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Acting chairman. When absent one working day or more, the chairman shall name another commissioner to act as chairman.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§107. THE PUBLIC UTILITIES COMMISSION STAFF

The following provisions apply to the commission's staff. [2009, c. 122, §7 (AMD).]

1. Appointment. The commission shall appoint:

A. An administrative director, a director of telephone and water utility industries, a director of electric and gas utility industries and a director of consumer assistance and safety; [2015, c. 8, §3 (AMD).]

B. With the approval of the Attorney General, a general counsel; and [1987, c. 141, Pt. A, §6 (NEW).]

C. An assistant administrative director. [1987, c. 141, Pt. A, §6 (NEW).]

[2015, c. 8, §3 (AMD) .]

2. Salary and conditions of employment. Salaries and conditions of employment of employees of the commission are as follows.

A. The general counsel, the administrative director, the assistant administrative director, the director of telephone and water utility industries, the director of electric and gas utility industries and the director of consumer assistance and safety serve at the pleasure of the commission and their salaries must be set by the commission within the ranges established by Title 2, section 6-A. [2015, c. 8, §4 (AMD).]

B. The compensation of the staff attorney and utility analyst positions are fixed by the commission with the approval of the Governor, but the compensation may not in the aggregate exceed the total amount appropriated or allocated in the commission's budget. [1993, c. 118, §1 (AMD).]

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the director of telephone and water utility industries, the director of electric and gas utility industries, the director of consumer assistance and safety and the staff attorney and utility analyst positions, are subject to the Civil Service Law. [2015, c. 8, §5 (AMD).]

D. [1993, c. 118, §3 (RP).]

E. The commissioners and all employees receive actual expenses when traveling on official business. [2009, c. 122, §7 (AMD).]

[2015, c. 8, §§4, 5 (AMD) .]

3. Commission's access to staff. Each commissioner may have access to the Public Utilities Commission staff and to any information available to the commission, subject to Title 5, section 9055.

[2009, c. 122, §7 (AMD) .]

4. Delegation of powers and duties to the staff. The commission may delegate to its staff such powers and duties as the commission finds proper. All delegations existing as of the effective date of this section are valid.

[1987, c. 141, Pt. A, §6 (NEW) .]

5. Administrative director's duties. The administrative director:

A. Shall keep a record of the proceedings of the commission, which must be open to inspection at all times; and [2009, c. 122, §7 (AMD).]

B. May certify all official acts of the commission, administer oaths and issue subpoenas, processes, notices, orders and other documents necessary to the performance of the commission's duties. [1987, c. 141, Pt. A, §6 (NEW).]

[2009, c. 122, §7 (AMD) .]

6. Assistant administrative director's duties. The assistant administrative director shall assist the director in the performance of the director's duties and in the absence of the director has the same power as the director.

[2009, c. 122, §7 (AMD) .]

7. Commission counsel. The commission may employ counsel in any proceeding, investigation or trial.

[1987, c. 141, Pt. A, §6 (NEW) .]

8. Dismissal. After successful completion of a probationary period, the employees occupying the positions of staff attorney and utility analyst may be dismissed, suspended or otherwise disciplined only for cause.

[1993, c. 589, §2 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 631, §3 (AMD). 1993, c. 118, §§1-3 (AMD). 1993, c. 589, §2 (AMD). 1997, c. 586, §§2,3 (AMD). 2003, c. 606, §§1,2 (AMD). 2007, c. 482, §5 (AMD). 2009, c. 122, §7 (AMD). 2011, c. 420, Pt. A, §§30-32 (AMD). 2015, c. 8, §§3-5 (AMD).

§108. COMMISSION ACTION; QUORUM; NOTICE

(REPEALED)

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 614, §1 (AMD). 1993, c. 36, §1 (RP).

§108-A. COMMISSION ACTION; QUORUM; NOTICE

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. [1993, c. 36, §2 (NEW).]

Notwithstanding Title 1, section 406, the commission is required to give notice of public proceedings only if the commission will deal with the expenditure of public funds or if the commission will make any of the following decisions in proceedings before it: a decision to initiate rulemaking or to adopt or modify a rule pursuant to Title 5, chapter 375, subchapter II; a decision making an advisory ruling pursuant to Title 5, chapter 375, subchapter III; a decision to commence an adjudicatory proceeding, an interim decision in an adjudicatory proceeding that will affect the substantive or procedural rights of any party, or a final decision at the conclusion of an adjudicatory proceeding, all pursuant to Title 5, chapter 375, subchapter IV; or a decision in any other proceeding pursuant to this Title or the commission's rules that requires commission approval or decision. In addition, if the commission is participating as a party in a proceeding before a federal agency and the commission will adopt a position in that federal proceeding, the commission shall give to other parties from the State who are participating in the federal proceeding notice of the public proceeding at which the commission may adopt that position. [1993, c. 36, §2 (NEW).]

SECTION HISTORY

1993, c. 36, §2 (NEW).

§108-B. LACK OF QUORUM; TEMPORARY APPOINTMENT

If the commission is unable to maintain a quorum for reasons as described in subsection 1, the Governor shall appoint 3 alternate commissioners who may serve as temporary commissioners in accordance with this section. [2013, c. 554, §1 (NEW).]

1. Selection of alternate commissioners. If 2 or more commissioners, due to a conflict of interest, disability or other reason, are unable to serve in a proceeding, which results in the commission being unable to maintain a quorum as provided under section 108-A, the commission shall report this information to the Governor and post this information on its publicly accessible website. Once the Governor is notified of the lack of a quorum for a particular proceeding, the Governor shall appoint 3 alternate commissioners, each of whom may serve as a temporary commissioner in that particular proceeding. All appointed alternate commissioners must be retired judges or justices who are subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities matters and to confirmation by the Legislature. Once the alternate commissioners are confirmed by the Legislature, the commission shall, in a transparent

manner, randomly assign from the alternate commissioners one alternate commissioner to be the first alternate commissioner, one alternate commissioner to be the 2nd alternate commissioner and one alternate commissioner to be the 3rd alternate commissioner and send this information to the Governor. Following the receipt of this information, the Governor shall appoint alternate commissioners as temporary commissioners in the assigned order, until the number of temporary commissioners needed to reach a quorum is reached. If, for good cause, an alternate commissioner is unable to serve as a temporary commissioner, the Governor shall appoint the next assigned alternate as a temporary commissioner.

[2013, c. 554, §1 (NEW) .]

2. Service for duration of proceeding. Once appointed as a temporary commissioner to serve in a proceeding, the temporary commissioner shall serve for the length of time for which there is otherwise no quorum for the proceeding.

[2013, c. 554, §1 (NEW) .]

3. Compensation. In the event of a temporary appointment under this section, the commission shall provide administrative support to the temporary commissioner and compensate the temporary commissioner for the hours spent at the commission working on a proceeding at an hourly rate that is computed by dividing the annual salary of a commissioner, established in Title 2, section 6-A, subsection 2, by 2,080 hours.

[2013, c. 554, §1 (NEW) .]

4. Authority. A temporary commissioner appointed pursuant to this section is subject to all laws applicable to and has such authority with respect to the proceeding as a commissioner. An alternate commissioner who is not appointed as a temporary commissioner has no authority with respect to any proceedings of the commission.

[2013, c. 554, §1 (NEW) .]

SECTION HISTORY

2013, c. 554, §1 (NEW).

§109. CONFLICTS OF INTEREST

In addition to the limitations of Title 5, section 18, the following limitations apply to prevent conflicts of interest. [1987, c. 141, Pt. A, §6 (NEW).]

1. Public utilities. A member or employee of the commission may not:

A. Have any official or professional connection or relation with any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

B. Hold any stock or securities in any public utility or competitive service provider operating within this State; [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

C. Render a professional service against any such public utility or competitive service provider; or [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

D. Be a member of a firm that renders service against any such public utility or competitive service provider. [1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[1999, c. 398, Pt. A, §11 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

2. Appointment to civil office. No commissioner may hold any other civil office of profit or trust under the Federal Government or State Government except the office of notary public.

[2009, c. 2, §97 (COR) .]

3. Political party. No commissioner may serve on or under a committee of a political party.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A11 (AMD). 1999, c. 398, §§A104,105 (AFF). RR 2009, c. 2, §97 (COR).

§110. REMOVAL OF COMMISSIONER

Any willful violation of this Title by a commissioner shall constitute sufficient cause for his removal by the Governor, on the address of both branches of the Legislature or by impeachment pursuant to the Constitution of Maine, Article IX, Section 5. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§111. RULES; ASSISTANCE

The commission may adopt rules and may employ assistance to carry out its responsibilities under this Title. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§112. POWER TO OBTAIN INFORMATION

1. Investigation of management of business. The commission may inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which each is conducted. The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

2. Facilities and information to be furnished. Every public utility shall furnish the commission with:

A. All reasonable facilities for the prompt and faithful discharge of its duties; and [1987, c. 141, Pt. A, §6 (NEW).]

B. All information necessary to perform its duties and carry into effect this Title. If it is unable to furnish the information, it shall give a good and sufficient reason for the failure, and the reason for the failure shall be verified by an officer, owner or agent of the public utility and returned to the commission at its office within the time fixed by the commission. [1987, c. 141, Pt. A, §6 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

3. Inspection of books and papers; confidentiality. The following provisions apply to inspection of books and papers.

A. The commission or any commissioner or any person employed by it for that purpose, may upon demand inspect and copy the books, accounts, papers, records and memoranda of any public utility in relation to its business and affairs. [1987, c. 141, Pt. A, §6 (NEW).]

B. A person other than a commissioner must produce his authority to make an inspection. [1987, c. 141, Pt. A, §6 (NEW).]

C. A person employed by the commission to inspect utilities documents may not divulge information ascertained by inspection except:

(1) To the commission; or

(2) Under direction of the commission. [1987, c. 141, Pt. A, §6 (NEW).]

D. Any person who violates this subsection is guilty of a Class E crime. [1987, c. 141, Pt. A, §6 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

4. Production of documents; failure to obey. The commission may require the production of documents as follows.

A. The commission may require, by order or subpoena to be served on any public utility or its agent in the same manner that a summons is served in a civil action in the Superior Court, the production of any books, accounts, papers, records or verified copies of them kept by a public utility or within the control of a public utility in any office or place within or outside the State, so that an examination may be made by the commission or under its direction. [2003, c. 505, §7 (AMD).]

B. [2003, c. 505, §8 (RP).]

C. Subject to the requirements of the United States Constitution and the Constitution of Maine and upon a finding that there is probable cause to believe that a public utility is altering, amending, removing or destroying any of its books, accounts, papers or records in an attempt to frustrate an investigation of the commission, a Judge of the District Court or a Justice of the Peace, at the request of the commission and without notice, may issue a search warrant requiring seizure of those documents that are necessary for the commission to discharge its duties. [1993, c. 165, §1 (NEW).]

The provisions of this subsection do not apply to any telephone utility other than a provider of provider of last resort service with respect to the provision of provider of last resort service.

[2011, c. 623, Pt. A, §8 (AMD) .]

5. Telephone utilities. Every telephone utility, dark fiber provider, voice service provider and wholesale competitive local exchange carrier shall provide to the commission upon request or order information relevant to the commission's implementation or enforcement of any provision of state or federal law or rule to which the telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier is subject and over which the commission exercises authority or jurisdiction. A telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier that fails to comply with a commission order directing the production of information relevant to the commission's

implementation or enforcement of a provision of state or federal law or rule to which the telephone utility, dark fiber provider, voice service provider or wholesale competitive local exchange carrier is subject and over which the commission exercises authority or jurisdiction is in violation of this subsection.

[2011, c. 623, Pt. A, §8 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1993, c. 165, §1 (AMD). 2003, c. 505, §§7,8 (AMD). 2011, c. 623, Pt. A, §8 (AMD).

§113. MANAGEMENT AUDIT

1. Audit. The commission may require the performance of a management audit of the operations of any public utility in order to determine:

- A. The degree to which a public utility's construction program evidences planning adequate to identify realistic needs of its customers; [1987, c. 141, Pt. A, §6 (NEW).]
- B. The degree to which a public utility's operations are conducted in an effective, prudent and efficient manner judged by the standards prevailing in the utility industry; [1987, c. 141, Pt. A, §6 (NEW).]
- C. The degree to which a public utility minimizes or avoids inefficiencies which otherwise would increase costs to customers; or [1987, c. 141, Pt. A, §6 (NEW).]
- D. Any other consideration which the commission finds relevant to rate setting under chapter 3, sections 301 and 303. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Independent auditor. The commission may have a management audit performed by an independent auditor. If the commission finds it reasonable and necessary to have the audit performed, it may:

- A. Select the independent auditor; [1987, c. 141, Pt. A, §6 (NEW).]
- B. Require a public utility to pay for the costs of a management audit of its operations; and [1987, c. 141, Pt. A, §6 (NEW).]
- C. Require the public utility to execute a contract with the independent auditor. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Costs. The full cost of the management audit shall be recovered from ratepayers. In ordering an audit, the commission shall consider the impact of the cost of the audit upon the ratepayers and other alternatives that are available.

[1987, c. 141, Pt. A, §6 (NEW) .]

4. Telephone utilities. This section does not apply to any telephone utility other than a provider of provider of last resort service. The commission may not conduct or require a management audit under subsection 1 or 2 of a provider of provider of last resort service unless the commission finds that there is no less burdensome means of obtaining the information sought to be obtained in the management audit and:

- A. The provider has filed for an increase in provider of last resort service rates; [2011, c. 623, Pt. A, §9 (NEW).]
- B. The provider has filed for an increase in funding from a state universal service fund under section 7104; or [2011, c. 623, Pt. A, §9 (NEW).]

C. The commission, following an investigation, finds that the provider's provider of last resort service quality has declined in a manner contrary to the public interest. [2011, c. 623, Pt. A, §9 (NEW).]

[2011, c. 623, Pt. A, §9 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 2011, c. 623, Pt. A, §9 (AMD).

§114. UTILITY PERSONNEL RECORDS

1. Confidential. The following records of public utilities are confidential and, except as otherwise provided in subsection 3, are excluded from the books, accounts, papers, records, memoranda, documents and information otherwise available to the commission under this Title and may not be open to public inspection:

A. Materials prepared for and used specifically in the examination or evaluation of applicants for positions with a public utility, including working papers, research materials, records and examinations; [1987, c. 141, Pt. A, §6 (NEW).]

B. Records containing the following:

- (1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references;
- (3) Information pertaining to the credit worthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; or
- (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations or any other information or materials that may result in disciplinary action; or [1987, c. 141, Pt. A, §6 (NEW).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

2. Compliance. Failure or refusal by any public utility or any officer, agent or attorney of any public utility to comply with any order, data request or subpoena calling for the production of those records other than an order issued pursuant to subsection 3, shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. In camera inspection. Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of the request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its

disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to the terms and conditions that are just, due consideration being given to the privacy interests of the employee involved.

[1987, c. 141, Pt. A, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§115. ENFORCEMENT OF STATE LAWS

The following provisions apply to the enforcement of state laws. [1987, c. 141, Pt. A, §6 (NEW) .]

1. Commission's duties. The commission shall:

- A. Inquire into any neglect or violation of state laws by a public utility doing business within the State; [1987, c. 141, Pt. A, §6 (NEW).]
- B. Inquire into any neglect or violation of state laws by the officers, agents, employees or any person operating the plant of a public utility; [1987, c. 141, Pt. A, §6 (NEW).]
- C. Enforce this Title and all other laws relating to public utilities; and [1987, c. 141, Pt. A, §6 (NEW).]
- D. Report all possible criminal violations of this Title and all other laws relating to public utilities to the Attorney General. [2003, c. 505, §9 (AMD).]

[2003, c. 505, §9 (AMD) .]

2. Duties of the Attorney General and district attorneys. Upon the request of the commission, the Attorney General or the district attorney of the proper county shall:

- A. Aid in any investigation, hearing or trial conducted under this Title; and [1987, c. 141, Pt. A, §6 (NEW).]
- B. Institute and prosecute all proceedings for the enforcement of this Title and of all other state laws relating to public utilities and to the punishment of violations. [1987, c. 141, Pt. A, §6 (NEW).]

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Administrative penalties. Unless otherwise provided, the following provisions apply to administrative penalties.

- A. A complaint for the enforcement of an administrative penalty may be made by the commission. [2003, c. 505, §10 (AMD).]
- B. A suit to enforce any administrative penalty may be brought in the name of the State in the Superior Court in the county where the main office of the public utility is located or in Kennebec County. [2003, c. 505, §10 (AMD).]
- C. An action commenced by the commission must be prosecuted by the Attorney General. [1999, c. 398, Pt. A, §12 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF).]

[2003, c. 505, §10 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A12 (AMD). 1999, c. 398, §§A104,105 (AFF). 2003, c. 505, §§9,10 (AMD).

§116. FUNDING OF THE COMMISSION

1. Entities subject to assessments. Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission and every qualified telecommunications provider is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The commission shall determine the assessments annually prior to May 1st and assess each utility or qualified telecommunications provider for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility or qualified telecommunications provider shall pay the assessment charged to the utility or qualified telecommunications provider on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities and qualified telecommunications providers under this section are just and reasonable operating costs for rate-making purposes. [2011, c. 623, Pt. B, §1 (AMD).]

B. For the purposes of this section, "intrastate gross operating revenues" means:

(1) In the case of all utilities except telephone utilities, revenues derived from filed rates except revenues derived from sales for resale;

(2) In the case of a telephone utility, all intrastate revenues, except revenues derived from sales for resale, whether or not the rates from which those revenues are derived are required to be filed pursuant to this Title; and

(3) In the case of a qualified telecommunications provider, all intrastate revenues except revenues derived from sales for resale. [2013, c. 600, §1 (RPR).]

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment. [1995, c. 1, §29 (COR).]

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities or qualified telecommunications providers in the current year. [2011, c. 623, Pt. B, §1 (AMD).]

E. The commission may exempt utilities or qualified telecommunications providers with annual intrastate gross operating revenues under \$50,000 from assessments under this section. [2011, c. 623, Pt. B, §1 (AMD).]

For purposes of this section, "qualified telecommunications provider" means a provider of interconnected voice over Internet protocol service that paid any assessment under this subsection, whether voluntarily, by agreement with the commission or otherwise, prior to March 1, 2012.

[2013, c. 600, §1 (AMD) .]

2. Committee recommendations; legislative approval of budget. The commission shall submit its budget recommendations, using a zero-based budgeting process or other process or method directed by the State Budget Officer, as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The commission shall make a presentation of its budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint

standing committee of the Legislature having jurisdiction over public utilities matters. The joint standing committee of the Legislature having jurisdiction over public utilities matters shall review the commission's recommendations and make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding the budget of the commission, including but not limited to all expenditures from the fund established pursuant to this section. The commission shall make an annual report in accordance with section 120 of its planned expenditures for the year and on its use of funds in the previous year. In addition to the assessments authorized under this section, the commission may also receive other funds as appropriated or allocated by the Legislature.

[2011, c. 590, §2 (AMD) .]

3. Deposit of funds. All revenues derived from assessments levied against utilities or qualified telecommunications providers described in this section must be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Regulatory Fund.

[2011, c. 623, Pt. B, §2 (AMD) .]

4. Use of funds. The Public Utilities Commission may use the revenues provided in accordance with this section to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to administer this Title.

[2007, c. 240, Pt. P, §1 (AMD) .]

5. Unexpended funds. Any amount of the funds that is not expended at the end of a fiscal year does not lapse, but is carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

[2005, c. 135, §2 (AMD) .]

6. Violations.

[2003, c. 505, §11 (RP) .]

7. Special assessment.

[1991, c. 343, §4 (RP) .]

8. Public Advocate assessment. Every utility or qualified telecommunications provider subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for operating the Office of the Public Advocate. The portion of this assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the Public Advocate of resources devoted to matters related to each category. The Public Advocate shall develop a reasonable and practicable method of accounting for resources devoted by the Public Advocate to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The revenues produced from this assessment are transferred to the Public Advocate Regulatory Fund and may only be used to fulfill the duties specified in chapter 17. The assessments charged to utilities and qualified telecommunications providers under this subsection are considered just and reasonable operating costs for rate-making purposes. The Public Advocate shall develop a method of accounting for staff time within the Office of the Public Advocate. All professional and support staff shall account for their time in such a way as to identify the percentage of time devoted to public utility and qualified telecommunications provider regulation and the percentage of time devoted to other duties that may be required by law.

A. The Public Advocate shall submit its budget recommendations, using a zero-based budgeting process or other process or method directed by the State Budget Officer, as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The assessments and expenditures provided in this section are subject to legislative approval. The Public Advocate shall make an annual report of its planned expenditures for the year and on its use of funds in the previous year. The Public Advocate may also receive other funds as appropriated by the Legislature. [2011, c. 590, §3 (AMD).]

B. The Public Advocate may use the revenues provided in accordance with this section to fund the Public Advocate and 9 employees and to defray the costs incurred by the Public Advocate pursuant to this Title, including administrative expenses, general expenses, consulting fees and all other reasonable costs incurred to administer this Title. [1999, c. 259, §3 (AMD).]

C. [1993, c. 633, §3 (AFF); 1993, c. 633, §1 (RP).]

C-1. Funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years. [2005, c. 135, §3 (AMD).]

D. [2003, c. 505, §12 (RP).]

[2011, c. 590, §3 (AMD); 2011, c. 623, Pt. B, §3 (AMD) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 631, §§4,5 (AMD). 1989, c. 58, §§1,2 (AMD). 1989, c. 571, §A3 (AMD). 1989, c. 875, §§E44,45 (AMD). 1991, c. 9, §§E19-21 (AMD). 1991, c. 343, §§1-4 (AMD). 1991, c. 528, §CC2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §CC2 (AMD). 1993, c. 118, §4 (AMD). 1993, c. 174, §1 (AMD). 1993, c. 633, §§1,2 (AMD). 1993, c. 633, §3 (AFF). RR 1995, c. 1, §29 (COR). 1995, c. 225, §4 (AMD). 1995, c. 368, §L1 (AMD). 1995, c. 665, §O1 (AMD). 1997, c. 424, §§B4,5 (AMD). 1997, c. 586, §4 (AMD). 1997, c. 643, §J1 (AMD). 1997, c. 719, §1 (AMD). 1999, c. 259, §3 (AMD). 1999, c. 398, §C1 (AMD). 2001, c. 28, §1 (AMD). 2001, c. 136, §1 (AMD). 2003, c. 272, §§1,2 (AMD). 2003, c. 505, §§11,12 (AMD). 2005, c. 3, §J1 (AMD). 2005, c. 135, §§1-3 (AMD). 2007, c. 16, §§1, 2 (AMD). 2007, c. 240, Pt. P, §1 (AMD). 2007, c. 478, §1 (AMD). 2007, c. 539, Pt. KK, §13 (AMD). 2011, c. 590, §§2, 3 (AMD). 2011, c. 623, Pt. B, §§1-3 (AMD). 2013, c. 600, §1 (AMD).

§117. REIMBURSEMENT FUND

1. Filing fees expense; reimbursements and payment for services. All money collected by the commission in the form of filing fees, expense reimbursements ordered by the commission or payment for services shall be deposited with the Treasurer of State in an account to be known as the Public Utilities Commission Reimbursement Fund. Services for which the commission receives payment include the reproduction and distribution of copies of commission decisions, agenda and dockets, photocopying and the use of facilities. This account is a continuous carrying account, with appropriate subaccounts, for reimbursement of commission expenses incurred in processing the associated matters or providing the associated services or facilities which generated the filing fee, expense reimbursement or payment. So much of the filing fee, expense reimbursement or payment as may be required by the commission is allocated for these purposes and for the refund of the unexpended portion of the filing fee.

[1989, c. 159, §1 (AMD) .]

2. State Controller's approval. All payments under this section shall be made to the commission after approval of the State Controller. In no event may the payments exceed the amounts received by the Treasurer of State from the Public Utilities Commission. Upon certification by the administrative director of the commission that certain amounts in the Public Utilities Commission Reimbursement Fund are not required by the commission, the Treasurer of State shall transfer the amounts to the General Fund.

[1987, c. 141, Pt. A, §6 (NEW) .]

3. Administrative penalties. Except as provided in this subsection, all administrative penalties collected by the commission must be deposited into the Public Utilities Commission Reimbursement Fund.

A. The commission may use amounts collected as administrative penalties and deposited in the Public Utilities Commission Reimbursement Fund to reimburse the commission for additional expenses associated with the enforcement activities that resulted in the collection of the penalty. If the Department of Public Safety, Office of the State Fire Marshal undertakes an investigation of a gas explosion event pursuant to Title 25, section 2394, subsection 1 involving a gas utility or a natural gas pipeline utility subject to the jurisdiction of the commission, the commission, at the request of the State Fire Marshal, may reimburse the Office of the State Fire Marshal for its additional expenses associated with that investigation. [2011, c. 27, §2 (AMD) .]

B. After deducting any amount used pursuant to paragraph A, the commission may, to the extent practicable and in as equitable and fair a manner as possible, apply administrative penalties, along with any accrued interest, in accordance with this paragraph. The commission shall seek to apply the amount in a manner that benefits those customers affected or potentially affected by the violation, if they can reasonably be identified or, if the commission determines this application of the amount to be impractical or unreasonable, in a manner that benefits the class or group of customers affected or potentially affected by the violation. In order to achieve the purposes of this paragraph, the commission may apply the funds:

- (1) In the form of a direct payment or credit to the customers or group or class of customers affected or potentially affected by the violation resulting in the administrative penalty;
- (2) To supplement a low-income assistance or outreach program that the commission determines would benefit customers affected or potentially affected by the violation resulting in the administrative penalty;
- (3) To supplement the conservation program fund established pursuant to section 10110, subsection 7;
- (4) To supplement the telecommunications education access fund established pursuant to section 7104-B; or
- (5) To supplement any other program or fund that the commission determines would benefit customers affected or potentially affected by the violation.

Amounts applied pursuant to this paragraph to supplement an existing program or fund may not result in a reduction in other funding provided for the program or fund unless the reduction is outside the commission's control and the commission finds that application of the penalty amount to the fund or program is the most appropriate use of the penalty and the net effect will be an increase in total funding available to the program or fund.

In any final order issued by the commission approving or denying the application of administrative penalties to benefit any person affected or potentially affected by the violation, the commission shall make specific findings of fact supporting the commission's decision, including findings supporting any amount the commission approves as well as findings supporting the commission's denial of amounts requested by any person. [2011, c. 27, §2 (AMD) .]

[2011, c. 27, §2 (AMD) .]

4. Budget approval. The commission shall submit its budget recommendations for the Public Utilities Commission Reimbursement Fund as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666.

[1997, c. 424, Pt. B, §6 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 159, §1 (AMD). 1997, c. 424, §B6 (AMD). 2003, c. 505, §13 (AMD). 2005, c. 432, §1 (AMD). RR 2009, c. 2, §98 (COR). 2011, c. 27, §2 (AMD).

§118. PARTICIPATION WITH OTHER REGULATORY BODIES

The commission may participate with other state and federal public utility regulatory bodies, including the Federal Energy Regulatory Commission and the Federal Communications Commission, or their successors, in joint hearings and studies relating to mutually regulated utilities. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§119. FIVE-YEAR REVIEW

Commencing with a review in 1985, the commission shall review the laws governing Public Utilities Commission operations and areas of jurisdiction every 5 years. Upon the review, the commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities legislation to remove any outdated provisions. [1987, c. 141, Pt. A, §6 (NEW).]

SECTION HISTORY

1987, c. 141, §A6 (NEW).

§120. ANNUAL REPORT

The commission shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over public utilities on: [1987, c. 141, Pt. A, §6 (NEW).]

1. Budget. The commission's planned expenditures for the year and its use of funds in the previous year, including the expenditures from the Public Utilities Commission Regulatory Fund as established pursuant to section 116;

[1999, c. 584, §1 (AMD) .]

2. Various fees. The waiver, exemption, receipt and expenditure of any filing fees, expenses, reimbursements or fines collected under this Title, on a case-by-case basis;

[1999, c. 584, §1 (AMD) .]

3. Regional issues. The commission's efforts undertaken in accordance with its authority under this Title to promote and protect consumer interests through participation in and presentations before regional entities and federal agencies with jurisdiction over regional marketplaces that affect the State's consumers. The commission must provide an assessment of staffing requirements to undertake these responsibilities;

[2001, c. 137, §1 (AMD) .]

4. Rural issues. The commission's efforts undertaken in accordance with its authority under this Title to ensure that rural areas of this State are not disadvantaged as utility industries are restructured and competitive markets developed. The commission shall identify any rural issues that it has determined may require legislative action;

[2009, c. 122, §8 (AMD) .]

5. Telephone exemptions. The commission's activities undertaken pursuant to its authority to grant exemptions to providers of provider of last resort service from certain portions of this Title;

[2011, c. 623, Pt. D, §4 (AMD) .]

6. Significant developments. Any significant developments in the utility sectors or other areas of commission oversight; and

[2009, c. 122, §10 (NEW) .]

7. Other. All other subjects that the commission is required to include in the annual report pursuant to law.

[2009, c. 122, §11 (NEW) .]

SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 9, §E22 (AMD). 1999, c. 584, §1 (AMD). 2001, c. 137, §§1,2 (AMD). 2009, c. 122, §§8-11 (AMD). 2011, c. 623, Pt. D, §4 (AMD).

§121. MODEL CODE

(REPEALED)

SECTION HISTORY

2003, c. 645, §6 (NEW). 2005, c. 350, §15 (AMD). 2007, c. 699, §19 (AMD). 2009, c. 261, Pt. A, §15 (AMD). MRS A T. 35-A, §121, sub-§3 (RP).

§122. ENERGY INFRASTRUCTURE CORRIDORS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/30/17)

(WHOLE SECTION TEXT REPEALED 7/30/17)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Environmental Protection. [2007, c. 656, Pt. A, §3 (NEW) .]

B. "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:

- (1) Generation interconnection transmission facilities;
- (2) Energy generation facilities; or
- (3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles. [2009, c. 655, Pt. A, §2 (AMD).]

C. "Energy infrastructure corridor" means a geographic area within the State designated in accordance with this section for the purposes of siting energy infrastructure. "Energy infrastructure corridor" includes statutory corridors and petitioned corridors. [2009, c. 655, Pt. A, §2 (AMD).]

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B. [2007, c. 656, Pt. A, §3 (NEW).]

D-1. "Petitioned corridor" means an energy infrastructure corridor designated by the commission in accordance with subsection 2. [2009, c. 655, Pt. A, §2 (NEW).]

E. "Potential developer" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure. [2009, c. 655, Pt. A, §2 (AMD).]

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor. [2007, c. 656, Pt. A, §3 (NEW).]

F-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person who submitted the information and would make available information not otherwise publicly available. [2009, c. 655, Pt. A, §2 (NEW).]

F-2. "Searsport-Loring corridor" means the real estate, real property rights and easements and infrastructure associated with the pipeline existing on the effective date of this paragraph and associated easement corridor extending from Searsport to the former Loring Air Force Base in Limestone, Maine, as granted and conveyed by the United States Air Force to the Loring Development Authority of Maine in 2005, together with such additional rights, property, easement scope and physical rights of way as may have been or may be acquired, as are necessary to effectuate the intent of the parties to the leases, easements and agreements existing on the effective date of this paragraph and as may be reasonably necessary or desirable to further develop the Searsport-Loring corridor as a statutory corridor for use pursuant to subsection 1-B. [2009, c. 655, Pt. A, §2 (NEW).]

F-3. "State-owned" means owned by the State or by a state agency or state authority. [2009, c. 655, Pt. A, §2 (NEW).]

F-4. "Statutory corridor" means an energy infrastructure corridor designated under subsection 1-A. [2009, c. 655, Pt. A, §2 (NEW).]

G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD).]

1-A. Statutory corridors designated. The following areas are designated as statutory corridors:

A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the Maine Turnpike, in accordance with the provisions of subsection 1-C; [2009, c. 655, Pt. A, §2 (NEW).]

B. The Interstate 295 corridor; and [2009, c. 655, Pt. A, §2 (NEW).]

C. The Searsport-Loring corridor, subject to the following provisions.

(1) The Searsport-Loring corridor may be used, developed and expanded for energy infrastructure consistent with any leases, easements or other agreements in effect on the effective date of this subsection. It is not a statutory corridor until the expiration or termination of such leases, easements or other agreements.

(2) The executive director of the Loring Development Authority of Maine shall notify the Interagency Review Panel under subsection 1-B when any leases, easements or other agreements in effect on the effective date of this subsection affecting or otherwise pertaining to the Searsport-Loring corridor have expired or otherwise terminated. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW).]

1-B. Use of statutory corridors; Interagency Review Panel. The Interagency Review Panel, as established in Title 5, section 12004-G, subsection 30-D and referred to in this subsection as "the panel," shall oversee the use of statutory corridors in accordance with this section.

A. The panel includes the following members:

- (1) The Director of the Governor's Energy Office within the Executive Department or the director's designee;
- (2) The Commissioner of Administrative and Financial Services or the commissioner's designee;
- (3) The commissioner of each department or the director of any other state agency or authority that owns or controls land or assets within the statutory corridor under consideration or that commissioner's or director's designee;
- (4) Four members of the public appointed by the Governor in accordance with this subparagraph, subject to review by the joint standing committee of the Legislature having jurisdiction over utilities and energy matters and to confirmation by the Senate:
 - (a) One member with expertise in energy and utilities selected from candidates nominated by the President of the Senate;
 - (b) One member with expertise in real estate or finance selected from candidates nominated by the President of the Senate;
 - (c) One member representing industrial or commercial energy consumers selected from candidates nominated by the Speaker of the House; and
 - (d) One member representing residential energy consumers selected from candidates nominated by the Speaker of the House.

Public members serve 3-year terms, except that a vacancy must be filled for the unexpired portion of the term. A public member serves until a successor is appointed. A public member may serve a maximum of 2 consecutive terms. Compensation of public members is as provided in Title 5, section 12004-G, subsection 30-D;

(5) The Public Advocate; and

(6) The Director of the Governor's Office of Policy and Management within the Executive Department or the director's designee. [2013, c. 360, §1 (AMD).]

B. The panel shall identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets the qualifications of paragraph F. [2009, c. 655, Pt. A, §2 (NEW).]

C. The panel shall establish and implement a regular process for soliciting, accepting and evaluating energy infrastructure proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the statutory corridor for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and the opportunity for potential developers to submit proposals for use of the statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

D. The panel shall evaluate and render a decision on an energy infrastructure proposal for use of a statutory corridor in accordance with subsection 1-D. The decision must be approved by the Governor prior to the entry by the State into a binding contract for use of a statutory corridor pursuant to this section. [2013 , c . 360 , §2 (AMD) .]

E. If a proposal is accepted pursuant to subsection 1-D, the panel may enter into negotiations with the potential developer who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the statutory corridor, in accordance with this paragraph.

(1) The panel shall negotiate the terms of the occupancy agreement, including but not limited to the length of the agreement and compensation to the State for use of the statutory corridor and any conditions of use. In negotiating the occupancy agreement, the panel shall take into account existing legal commitments, contractual obligations, reasonable investment-backed expectations and relevant prior state investments, when applicable.

(2) Compensation to the State may be in the form of payments made on an annual basis or the functional or financial equivalent, discounted prices for energy products or services, partial ownership by the State of the energy infrastructure on the basis of the value of the statutory corridor in proportion to the energy infrastructure as a whole, or other appropriate form. The terms of compensation may include provisions for periodic adjustment of the compensation to the State over time and reimbursement of costs to any state agency or authority that owns or controls land or assets within the statutory corridor.

(3) Negotiation of compensation to the State must be based on at least one independent appraisal performed by a professional appraiser in accordance with paragraph F. An independent appraisal performed under this subparagraph must, at a minimum, consider the costs that will be avoided by the potential developer, including but not limited to the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of the state-owned land or asset, the revenues estimated to be generated by the use of the state-owned land or asset and other relevant factors.

(4) Any occupancy agreement entered into under this section for the use of any portion of the Interstate 95 corridor that is designated as the Maine Turnpike must comply with the memorandum of agreement between the Department of Transportation and the Maine Turnpike Authority pursuant to subsection 1-C. [2009 , c . 655 , Pt . A , §2 (NEW) .]

F. The panel shall contract for the services of a professional appraiser or appraisers to assist the panel in its duties under this subsection. The professional appraiser contracted under this paragraph must:

(1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;

(2) Hold a professional designation from a nationally recognized organization of appraisers; and

(3) Be licensed by this State as a certified general real property appraiser in accordance with Title 32, section 14035 or hold a comparable license from another state.

The cost of the services of a professional appraiser who provides services in accordance with this paragraph must be paid by potential developers submitting proposals for use of the corridor under this subsection in proportion to the amount of time spent by the appraiser on each potential developer's proposal. Payments for appraisal costs collected from potential developers may be expended for the costs of appraisal services and to pay member expenses as authorized under Title 5, section 12004-G, subsection 30-D. [2013 , c . 360 , §3 (AMD) .]

G. The following proprietary information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use, is confidential within the meaning of Title 1, section 402, subsection 3, paragraph A and may not be released by the panel or the state agency or authority involved:

- (1) Proprietary information in the possession of the state agency or authority; and
- (2) Proprietary information in the possession of the panel or a professional appraiser assisting the panel. [2009, c. 655, Pt. A, §2 (NEW).]

H. No later than February 1st of each year, the panel shall provide a written report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters that documents the activities of and actions taken by the panel under this subsection during the previous calendar year. [2009, c. 655, Pt. A, §2 (NEW).]

I. The panel may adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §§1-3 (AMD) .]

1-C. Maine Turnpike Authority; memorandum of agreement; approval of occupancy agreements.

The Maine Turnpike Authority shall negotiate the terms of and enter into a memorandum of agreement with the Department of Transportation, consistent with paragraph A, to govern the conditions under which the Maine Turnpike Authority will grant an occupancy agreement for use of Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. The Maine Turnpike Authority shall approve the terms of any occupancy agreement for use of Maine Turnpike Authority property within the Interstate 95 corridor that is consistent with the memorandum of agreement.

A. The terms of the memorandum of agreement must provide for:

- (1) Application of reasonable engineering standards of the Maine Turnpike Authority to the location and design of energy infrastructure on Maine Turnpike Authority property within the Interstate 95 statutory corridor;
- (2) The right of the Maine Turnpike Authority to review and approve all construction, reconstruction, expansion, improvement, maintenance or operation of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor in accordance with reasonable engineering standards of the Maine Turnpike Authority. The Maine Turnpike Authority may not unreasonably withhold approval under this subparagraph;
- (3) The right of the Maine Turnpike Authority to require relocation or reconfiguration of any portion of energy infrastructure and all related installations on Maine Turnpike Authority property within the Interstate 95 statutory corridor at the sole cost of the owner of the energy infrastructure so affected when and to the extent that such relocation or reconfiguration is reasonably necessary for the construction, reconstruction, expansion, improvement, maintenance or operation of the Maine Turnpike;
- (4) The right of the Maine Turnpike Authority to regulate access to Maine Turnpike Authority property within the Interstate 95 statutory corridor in a reasonable manner that is consistent with the safe and proper administration of the Maine Turnpike as a limited access highway; and
- (5) Reimbursement to the Maine Turnpike Authority of any reasonable costs it may incur in relation to use of the Maine Turnpike as part of the Interstate 95 statutory corridor, including, but not limited to, reasonable costs of review and inspection of design, construction, maintenance or repair of energy infrastructure and related operational costs, including, but not limited to, those for traffic control and other measures that are required to accommodate construction, maintenance or repair of energy infrastructure. [2009, c. 655, Pt. A, §2 (NEW).]

B. The Maine Turnpike Authority shall take all reasonable precautions, without forgoing or redesigning projects that it considers necessary or convenient for operation of the Maine Turnpike, to avoid material interference with the development of energy infrastructure on Maine Turnpike Authority property as part of the Interstate 95 statutory corridor. [2009, c. 655, Pt. A, §2 (NEW).]

[2009, c. 655, Pt. A, §2 (NEW) .]

1-D. Energy infrastructure proposal; decision criteria. The deciding authority shall evaluate and render a decision on an energy infrastructure proposal in accordance with this subsection. For the purposes of this subsection, "deciding authority" means the Interagency Review Panel acting under subsection 1-B, paragraph D and subject to the approval of the Governor, or the Public Utilities Commission acting under subsection 5-A or section 3132, subsection 6-A.

A. The deciding authority may approve an energy infrastructure proposal only if the deciding authority finds that the proposal:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
- (3) Is in the long-term public interest of the State, based on a determination made in accordance with paragraph B. [2009, c. 655, Pt. A, §2 (NEW).]

B. The deciding authority shall determine whether an energy infrastructure proposal is in the long-term public interest of the State. In making that determination, the deciding authority shall, at a minimum, consider the extent to which the proposal:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
- (3) Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
- (4) Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
- (5) Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;
- (6) Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
- (7) Increases the energy reliability, security and independence of the State; and
- (8) Reduces the release of greenhouse gases. [2009, c. 655, Pt. A, §2 (NEW).]

[2013, c. 360, §4 (AMD).]

2. Designation of petitioned corridors. The commission may, upon petition, designate petitioned corridors in accordance with this subsection.

A. The commission may designate a petitioned corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

- (1) The rulemaking to designate a petitioned corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The

commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the commission may direct.

(2) In any rulemaking regarding the designation of a petitioned corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of a petitioned corridor must be based on substantial evidence in the record of the rule-making hearing. [2009, c. 655, Pt. A, §2 (AMD).]

B. The commission may commence a proceeding to designate a petitioned corridor only upon the filing of a petition for the designation of a petitioned corridor by the Office of the Public Advocate, the Executive Department, Governor's Energy Office or a potential developer. [2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

C. The commission shall dismiss a petition for the designation of a petitioned corridor filed under this subsection if, on the basis of a preliminary review, the commission determines that the petition:

- (1) Does not contain sufficient information to support the designation of a petitioned corridor; or
- (2) Was filed by a person other than a person listed in paragraph B. [2009, c. 655, Pt. A, §2 (AMD).]

D. The commission may designate a petitioned corridor only if the commission finds, after consultation with state agencies and other entities as required under subsection 3, that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot meet the needs of the proposed energy infrastructure and that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be:

- (1) In the public interest, including, but not limited to, consideration of:
 - (a) Encouraging collocation of energy infrastructure;
 - (b) Enhancing the efficient utilization of existing energy infrastructure; and
 - (c) Limiting impacts on the landscape; and
- (2) Consistent with environmental and land use laws and rules of the State. A finding that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6. [2009, c. 655, Pt. A, §2 (AMD).]

E. In designating a petitioned corridor, the commission shall limit the geographic area of the petitioned corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section. [2009, c. 655, Pt. A, §2 (AMD).]

F. The commission may not designate a petitioned corridor in any of the following lands:

- (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;
- (2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;
- (3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;
- (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;
- (5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park;
- (6) Federally owned land; and

(7) The Maine Turnpike, as described in Title 23, section 1964, subsection 9. [2009, c. 655, Pt. A, §2 (AMD).]

[2011, c. 655, Pt. MM, §15 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

3. Petitioned corridors; notification and consultation prior to designation. Prior to designating a petitioned corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department; [2007, c. 656, Pt. A, §3 (NEW).]

A-1. A state agency that owns or controls land or assets within the proposed corridor, within a statutory corridor or within a previously designated petitioned corridor; [2009, c. 655, Pt. A, §2 (NEW).]

A-2. The Department of Transportation regarding potential use of abandoned railroad corridors owned or controlled by the department; [2009, c. 655, Pt. A, §2 (NEW).]

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9; [2007, c. 656, Pt. A, §3 (NEW).]

C. The municipalities in which the petitioned corridor would be located; [2009, c. 655, Pt. A, §2 (AMD).]

D. The Maine Land Use Planning Commission and the counties in which the petitioned corridor would be located, if the petitioned corridor, or any portion of the petitioned corridor, would be located within unorganized or deorganized territories of the State; and [2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

E. A tribe, if the petitioned corridor, or any portion of the petitioned corridor, would be located on land of a tribe other than those lands specified in subsection 2, paragraph F. [2009, c. 655, Pt. A, §2 (AMD).]

[2009, c. 655, Pt. A, §2 (AMD); 2011, c. 682, §38 (REV).]

4. Use of corridors; certificate and permit required.

[2009, c. 655, Pt. A, §2 (RP).]

4-A. Use of energy infrastructure corridors; requirements. Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.

A. A person may not engage in development or construction of energy infrastructure within a statutory corridor, unless:

(1) The person has entered into an occupancy agreement with the Interagency Review Panel in accordance with subsection 1-B and, if applicable, with the Maine Turnpike Authority in accordance with subsection 1-C, and in compliance with applicable state and federal rules, regulations and laws;

(2) The department has issued a consolidated environmental permit for the project in accordance with subsection 6; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity for the transmission line. [2009, c. 655, Pt. A, §2 (NEW).]

B. A person may not engage in development or construction of energy infrastructure within a petitioned corridor, unless:

(1) The department has issued a consolidated environmental permit for the project in accordance with subsection 6;

(2) The commission has issued a corridor use certificate for the project in accordance with subsection 5-A; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line. [2009 , c. 655 , Pt. A , §2 (NEW) .]

[2009 , c. 655 , Pt. A , §2 (NEW) .]

5. Corridor use certificate.

[2009 , c. 655 , Pt. A , §2 (RP) .]

5-A. Corridor use certificate. Whenever a person proposes to develop or construct energy infrastructure within a petitioned corridor, that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. The commission shall evaluate and render a decision on any petition for a corridor use certificate in accordance with subsection 1-D. A certificate issued under this subsection must specify the terms and conditions of use of the petitioned corridor. The commission shall establish by rule procedures to minimize duplicative filing and review requirements for the corridor use certificate for any transmission line that requires a certificate of public convenience and necessity under section 3132. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009 , c. 655 , Pt. A , §2 (NEW) .]

6. Environmental review; consolidated environmental permit. Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project. [2007 , c. 656 , Pt. A , §3 (NEW) .]

B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department. [2007 , c. 656 , Pt. A , §3 (NEW) .]

C. The applicant for a consolidated environmental permit shall pay a fee no greater than the total amount of fees that would be required if individual permits were obtained by the applicant rather than the consolidated environmental permit and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant. [2009 , c. 655 , Pt. A , §2 (AMD) .]

D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department. [2009 , c. 655 , Pt. A , §2 (AMD) .]

E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and

programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval. [2007, c. 656, Pt. A, §3 (NEW).]

F. The department shall enforce the terms of the consolidated environmental permit. [2007, c. 656, Pt. A, §3 (NEW).]

G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions. [2007, c. 656, Pt. A, §3 (NEW).]

[2009, c. 655, Pt. A, §2 (AMD) .]

6-A. Revenues. Except as otherwise provided by subsection 1-C or any other law, including the Constitution of Maine, revenues generated from the use of state-owned land and assets within energy infrastructure corridors must be deposited in the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2009, c. 655, Pt. A, §2 (NEW) .]

6-B. Revenue from energy infrastructure corridors. Notwithstanding subsection 6-A, 20% of the revenues generated from the use of statutory corridors designated under subsection 1-A, paragraphs A and B owned by the Department of Transportation within energy infrastructure corridors must be deposited into the Secondary Road Program Fund established in Title 23, section 1803-C and 80% of the revenues must be deposited into the energy infrastructure benefits fund established in Title 5, section 282, subsection 9.

[2013, c. 369, Pt. A, §1 (AMD) .]

7. Eminent domain. This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

A. The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by section 3136. [2007, c. 656, Pt. A, §3 (NEW).]

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under section 3132 or a corridor use certificate under subsection 5-A to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- (1) Lands or easements located within 300 feet of an inhabited dwelling;
- (2) Lands or easements on or adjacent to any developed or undeveloped water power;
- (3) Lands or easements so closely paralleling existing wire lines of other utilities or existing energy transport pipelines that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines or pipelines, except with the consent of the owners;
- (4) Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311;
- (5) Lands or easements owned by the State or an agency or authority of the State; and
- (6) Transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on the effective date of this section. [2009, c. 655, Pt. A, §2 (AMD).]

C. The commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this paragraph, notwithstanding any transmission and distribution utility ownership of the lands or easements.

(1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.

(2) The amount of any lands or easements taken by the commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under subparagraph (1).

(3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant or an energy transport pipeline.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of the Public Advocate or the Executive Department, Governor's Energy Office, may transfer or convey to any person or state agency or authority lands and easements once acquired, except that a transmission and distribution utility or the owner of an energy transport pipeline whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility or an owner of an energy transport pipeline.

(7) The commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain. [2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF).]

[2011, c. 655, Pt. MM, §16 (AMD); 2011, c. 655, Pt. MM, §26 (AFF) .]

8. Utility service territory. Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

[2007, c. 656, Pt. A, §3 (NEW) .]

9. Rules.

[2009, c. 655, Pt. A, §2 (RP) .]

10. Repeal. This section is repealed July 30, 2017.

[2013, c. 360, §5 (AMD) .]

SECTION HISTORY

2007, c. 656, Pt. A, §3 (NEW). 2009, c. 655, Pt. A, §2 (AMD). 2011, c. 652, §13 (AMD). 2011, c. 652, §14 (AFF). 2011, c. 655, Pt. MM, §§14-16 (AMD). 2011, c. 655, Pt. MM, §26 (AFF). 2011, c. 682, §38 (REV). 2013, c. 360, §§1-5 (AMD). 2013, c. 369, Pt. A, §1 (AMD).

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